

REMARKS

Claims 2-21, 23-34, 36-45 are currently pending.

Response to Advisory Action

In the Advisory Action, the Examiner points out that the claim language does not specify when the comparison happens. The Applicant submits that this is not seminal in the analysis of whether or not the claimed invention is obvious in view of Scarne.

In the Advisory Action, the Examiner states that “submitting your winning ticket to the ticket collector is one example of a gaming ending state”, while at the same time admitting that Scarne does not teach “if said game ending state is achieved, ending said participation game for all of said plurality of players by preventing association of said current draw result with a further play request”. The Applicant submits that ending the game for only one player is different from ending the game for all players, since adapting a game from one to another would have a significant impact on the game dynamics and process. In Scarne, according to the Examiner’s interpretation, the game ends for the player who has cashed in his winning ticket. But a player who realizes on Monday that he has matched the treasury balance of that day decides to wait until the end of the week to cash his ticket, hoping to win more prizes by matching subsequent winning numbers later in the week. He may also forget altogether to cash in a winning ticket. If the Examiner’s interpretation was right and that cashing a winning ticket is an example of an ending game state, that would mean that the player has a control over the end of the game and when it occurs. The Applicant submits that the Examiner is reading in Scarne teaching that is absent from this document.

In the Advisory Action, the Examiner admits that Scarne does not teach “if said game ending state is achieved, ending said participation game for all of said plurality of players by preventing association of said current draw result with a further play request”. But then, states that the “electronic version of this game reads on the Applicant’s invention”. The Applicant disagrees. If a step of a method is not taught in its manual embodiment, this step does not appear instantly by adapting the method to an electronic format. Accordingly, since ending the game for all players do not exist in the manual version of

Scarne, its electronic format would still end the game only for the player who cashes in a winning ticket, not for all players, and thus would still not teach the limitation. In the same way, if a step was difficult, even impossible, to implement in the manual embodiment, it is not obvious that a person having skill in the art would implement it if the electronic adaptation gives the means to do it. It is the Applicant's opinion that to demonstrate that it would be obvious, one would have to show that the main reason why it was not implemented in the manual embodiment is that it would have been too onerous, complicated or impossible to do. Nowhere in Scarne is there any teaching, discussion or suggestion regarding the fact that ending the game for all players would be desirable or was even considered in its manual embodiment, let alone that an electronic version would allow its implementation. In fact, the Applicant submits that modern national lotteries are similar to what Scarne would be in an electronic format, and that those lotteries do not end the game for all players when a player cashes in a winning ticket either. Thus, the Applicant submits that an electronic version of Scarne would not end the "participation game for all of said plurality of players by preventing association of said current draw result with a further play request". [Note: for more details on the national lotteries demonstration, see 103(a) arguments below].

Later in the Advisory Action, the Examiner cites that the current draw results are the results for the current week. The Applicant submits that this is an admission that the game lasts a week. At the end of the week, new treasury balances are provided, and thus new current draw results. If the current draw result is no longer used, the claim language suggests that the game has ended, and thus for all players. If the game has ended for all players, it is because the game ending state has been achieved. Since the only situation when a current draw result ceases to be used is that the end of the week has been reached, one may conclude that the game ending state is reaching the end of the week. Since reaching the end of the week is influenced solely by the passing of time and never by the comparison of the player numbers with winning numbers, Scarne does not teach the limitation of "determining whether a game ending state is achieved based on said comparison" "of said current draw result and said game card".

The same way, since Scarne does not teach to end the "participation game for all of said plurality of players by preventing association of said current draw result with a further

play request", and that the participation ends "if said game ending state is achieved", cashing in a winning ticket cannot constitute an ending state as defined by the claimed invention.

The Applicant cannot respond to some arguments found in the advisory Action since they concern Applicant arguments that did not appear in the response concerned by this Advisory Action. In the Response dated April 18 2010, the Applicant did not discuss the meaning of the term "current" nor used the terms "at the time of the ticket sale", he is thus unsure as to the reason why the Examiner referred not only once but twice to this supposed argument in the Advisory Action.

Claim rejections under 35 U.S.C. § 103(a)

With respect to the rejections of claims 2-8, 12, 13 and 40-45 based on 35 U.S.C. § 103(a) as being unpatentable over Scarne's New Complete Guide to Gambling, reconsideration is respectfully requested on the following grounds:

In the Office Action, the Examiner disagrees with the Applicant's argument that Scarne does not teach "determining whether a game ending state is achieved based on said comparison", by interpreting the act of submitting a winning ticket to the ticket collector as an example of game ending state. The Applicant disagrees.

- Submitting a winning ticket is not a determination based on a comparison as stated in the claim. The comparison between the numbers appearing on the ticket and the Treasury balance's last five digits determines whether or not the ticket is a winning ticket, but as such is not linked with the act of submitting the ticket. In fact, according to the Office Action interpretation, if the ticket is never submitted and the ticket is a winning ticket, the game ending state would not occur. Using the same logic, a player may make a mistake and try to redeem a non-winning ticket or an older winning ticket.
- Nowhere in Scarne is there any mention or explanation of what happens, in fact, when a player submits a winning ticket. Since the game described by Scarne is a form of lottery, a PHOSITA would interpret what is not specifically

explained in light of other lotteries. The Applicant submits that a PHOSITA would interpret Scarne such that by submitting a winning ticket, a player ends the game for himself but has no effect on other players. Accordingly, even if the Applicant were to accept the Office Action interpretation that submitting a winning ticket for redemption is an example of a game ending state, this game ending state would not meet all the limitations of claim 41, since this claim also require that "if said game ending state is achieved, ending said participation for all of said plurality of players by preventing association of said current draw result with further play request..."

- The Applicant submits that not only does Scarne fail to disclose or teach in any way how the game would end for all players upon submission of a winning ticket, but also that this would be almost impossible to achieve. For that solution to work, it would mean that upon submission of a winning ticket on Monday, no more tickets would be sold and no more winning ticket would be accepted by the ticket collectors for the rest of the week. If it is so, how do the ticket collectors communicate the redemption of a winning ticket to the operator and then how does the latter make sure that his other agents do not redeem further winning tickets? And do they inform players that the game is over and no more tickets are to be redeemed for this week? Is the "game over" only for the top prize or is it over also for the consolation prizes? The Applicant reminds the reader that this kind of lottery was popular during the twenties and thirties, at a time when communications were not instantaneous like nowadays. It is the Applicant's belief that if these operation difficulties really existed, they would have been discussed in Scarne's text since others were (such as the impact an agent's dishonesty could have on the game operations). Thus, it is the Applicant's opinion that if Scarne is mute on the subject it is because those problems did not exist at the time, for the reason that the game did not operate as explained in the Office Action. The Applicant submits that a person of ordinary skill in the art would interpret Scarne as teaching a game having a fixed game period (one week) and wherein the game ending state is achieved when that game period is over. After the fixed

game period of Scarne, no more associations between a ticket and a winning number may be allowed: no more tickets are sold to play that week game and the tickets sold can only be compared to the five treasury balances published that week.

The Office Action then agrees that Scarne does not teach to end participation for all of said plurality of players but that it would be obvious to create an electronic version of the game. The Applicant agrees that it would be easy and obvious to make an electronic version of the game described in Scarne. In fact, it has been done: most of the national lottery games are now offered in an electronic format in which tickets are sold and then winning numbers are drawn (instead of using numbers published by serious and impartial entities) to be compared with the numbers borne on the tickets. But the Applicant points out that if the Examiner admits that the limitation is not taught by Scarne, its electronic application would not either. As the Applicant has explained earlier, if the communication of a game ending state by the operators to the agents and players had been a problem in a paper-lottery situation, Scarne would have mentioned it along with the winning ticket scam he described as a limitation of the system.

Applying Scarne in an electronic format, while adding the redemption of a winning ticket as a game ending state, would result in fundamentally modifying the game's spirit and might even repulse players who enjoyed the "old format". Ending the game for all players when a winning ticket is redeemed would force the players to race against each other to be the first to redeem their winning ticket. In fact, since the ticket in Scarne was compared to more than one winning number, these winning numbers being determined throughout the week, it would mean that owning a ticket on Monday would always be more advantageous than waiting till Friday to buy, contrarily to the system described in Scarne in which whenever the ticket was bought, the chances of winning were the same. Also, according to factors dependent or independent from their game habits, the players would not have the same chances of winning: the players not receiving the newspaper and waiting to have access to the numbers later in the day or the week would have had less chances of winning than those who had access to a newspaper

early in the morning; those living near the ticket collector would have had more chance than those who bought their tickets during their weekly “visit in town”, etc. In gaming jargon, Scarne describes a game wherein players compete against the game (trying to match the winning numbers regardless of the results of other players) while the claimed invention is more of the “player against player” persuasion. By ending the game for all players when a game ending state is achieved, the players try to be the first to achieve said game ending state (if the game ending state corresponds to a winning event) or to win as big a prize as possible before he or another player achieves the game ending state.

The Applicant interprets Scarne as being in the “player against game” category in part because of his certitude that Scarne does not describe a game wherein the redemption of a winning ticket is a game ending state. In fact, it is the Applicant’s belief that not only does Scarne’s game continue or end regardless of whether or not there is a winner (the player owning a winning ticket, redeemed or not), but even more, he believes that operators prefer to end the game without having sold a winning ticket. At page 159, one could read “There are 100,000 different possible arrangements of the five digits in a Treasury number, and if an operator sold a tenth of these, or 10,000 tickets each week, he could make a good living”. Consequently, the operators were counting on not selling all tickets, hoping that the winning tickets would be part of the unsold tickets. Scarne then explains how a dishonest agent could ruin an operator by fraudulently identifying the winning tickets after the last treasury balance of the current week has been published. Knowing the winning numbers, it is easy for the agent to return to the operator only the losing tickets, cashing on the winning ones with those redeemed by actual players. By raising the proportion of winning tickets over the total number of tickets sold, or forcing the operator to paying out too many “winners” in proportion of the tickets sold, the agent was cutting on the operator’s small profit margin. This demonstrates that the game end or duration was not a function of the winner determination and identification, but rather was totally independent of them. By not having the certitude that a winner would be found a week, the operator could hope

having more profitable weeks (those when none or just a few winning tickets would be redeemed) than others (those when all winning tickets would be sold and redeemed).

According to the Applicant, the only way to interpret Scarne's lottery system is as a game that always lasts a week, in which players purchase tickets bearing a combination of five digits which are compared to five winning numbers, each winning number comprising the five last digit of the U.S. Treasury balance published daily, Monday to Friday, in the newspaper. The player owning a ticket bearing a number matching all or part of the five digits of one of the five winning numbers may redeem his ticket against a predetermined prize. At the end of the week, the current game ends, all the unsold tickets ("As was customary, the 400 unsold tickets were returned to the operator, usually after the winning numbers had appeared in the papers.", page 159), and redeemed tickets are returned to the operator, and a new batch of tickets are put up for sale and comparison is made against next week winning numbers. Nowhere in Scarne is there any mention, teaching or suggestion of a game lasting less (ending when a first winner is determined) or more (if no winner is determined during the week) than a week or on how such a game would operate.

The Applicant wants to add other arguments that show that Scarne does not teach or suggest all limitations of the claim nor could be modified to teach them in a way that would not change the game's spirit and process in a fundamental way.

In the Office Action, it is stated that the limitation "maintaining said current draw in its current form thereby having said current draw result remaining composed of a constant amount of said numbers," is met because the player's five-digit number stays the same. The Applicant points out that, in the Office Action, the current draw is defined as the last five digits of the U.S. Treasury balance (page 3, lines 4-5). Thus, the limitation may only be met if the last five digits of the U.S. Treasury balance remained the same, not the player's five-digit number as stated in the Office Action. Accordingly, the Applicant submits that the limitation is not taught by Scarne.

Nowhere in Scarne is there any mention that a player may not win more than one prize with the same ticket. Accordingly, since five winning numbers are determined weekly, a PHOSITA would interpret this as meaning that a player may keep his ticket and compare it, at the end of the week, to all five winning numbers, hoping to match all or part of the five digits of at least one, but preferably more than one, winning number. For example, a player purchases the ticket identified in Scarne (page 159), 45365 and the treasury balances of that week are:

Monday: \$135,645,365

Tuesday: \$134,986,398

Wednesday: \$136,756,965

Thursday: \$135,756,396

Friday: \$135,835,365

The player, when comparing his ticket to the balance discovers that he wins on Monday (match all five numbers), on Wednesday (matches two last numbers) and on Friday (matches four numbers). Also, if another player has purchased a ticket bearing the numbers 56396, that player would win on Thursday for matching all five numbers. Nowhere in Scarne is there any mention nor suggestion that upon a player presenting his ticket to the operator no other ticket could be sold (in fact it is not clear in Scarne's description whether or not players may keep on purchasing tickets during the week or not) or no other player could win. In fact, the Applicant submits that a person of ordinary skill in the art would interpret Scarne as meaning quite the contrary: not only other players could keep on playing for the rest of the week, regardless of whether a player has deemed his prize or not, but even the winning player could keep on playing, each day providing a new number to compare to the purchased tickets. The Applicant believes that most players waited until the end of the week and the publication of all treasury balances of the week before redeeming his ticket, comparing his number against each treasury balance of the week and thus being awarded each prize won during the week.

According to this interpretation, a game has a fixed, predetermined duration, which is not affected by the presence or not of a winner. In Scarne, the game lasted a week and would not have been shortened if a player had redeemed his ticket before the end of the week, nor lengthened by the absence of a winner. In fact, operators were counting on the fact that all or most of the tickets bearing the five last numbers of the daily treasury balances would remain in the unsold ticket pile to make a profit. As explained by Scarne when describing how a dishonest agent could ruin an operator, if all winning tickets were purchased (by players or by the agents), the operator may well find himself having to pay too many prizes in proportion to the tickets won.

Accordingly, it is the Applicant's opinion that Scarne does not teach nor suggest the limitation "...determining whether a game ending state is achieved based on said comparison..." since the condition to determine whether the game ending state has been achieved and thus determine when the game ends is independent from the presence of a winner or not in the game, and even more independent from the comparison of any ticket numbers and the daily Treasury balance.

The Applicant submits that all other claims rejected or otherwise allowable herein not discussed, are dependent upon claims deemed allowable by the Applicant or are deemed allowable by the Applicant according to the same arguments as discussed claims and thus should also be found allowable.

It is therefore submitted that the whole set of claims herein provided is in condition for allowance. Reconsideration of the Office Action's rejections is respectfully requested. Allowance of claims 2 to 21, 23 to 34, and 36 to 45 at an early date is solicited.

In the event that there are any questions concerning this Response to an Office Action or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,
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